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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL L. GENSAW III, et al.,

CASE NO.: C-07-3009-TEH

Plaintiffs,

**JOINT CASE MANAGEMENT
STATEMENT**

vs.

DATE: June 2, 2008
TIME: 1:30 P.M.
CTRM: 12, 19th Floor
Honorable Thelton E. Henderson

DEL NORTE COUNTY UNIFIED
SCHOOL DISTRICT, et al.,

Defendants.

MITCHELL, BRISSO,
DELANEY & VRIEZE
814 Seventh Street
P.O. Drawer 1008
Eureka, CA 95502

1 The parties submit the following as their Joint Case Management Statement in the
2 above-entitled action.

3 Jurisdiction and Service

4 Plaintiffs assert that this Court has jurisdiction over all of the plaintiffs' claims
5 pursuant to 28 U.S.C. §§1331, 1343. This action for declaratory and injunctive relief
6 arises under 42 U.S.C. §1983, the Fourteenth Amendment to the United States
7 Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*, and Cal.
8 Gov. Code, §§11135, *et. seq.* Pursuant to 28 U.S.C. §§2201 and 2202, this Court has
9 jurisdiction to declare the rights of the parties and to grant all further relief deemed
10 necessary and proper. Rule 23(b)(2) of the Federal Rules of Civil Procedure authorizes
11 the maintenance of this action as a class action. Plaintiffs are not aware of any issue
12 regarding personal jurisdiction or venue. Venue is proper in this action pursuant to 28
13 U.S.C. §1391 because the defendants reside in the Northern District of California. All
14 defendants have been served with or have accepted service of the Complaint and have
15 appeared in the action.

16 Facts

17 In the 2004-2005 school year, approximately 67% of the students enrolled at
18 Margaret Keating Elementary School, in Klamath, California, were Native Americans.
19 Plaintiffs contend that Margaret Keating has been and is for students and others a center
20 of Native American cultural heritage, important to the preservation of the traditions,
21 values, and customs of the Yurok tribe.

22 On June 9, 2005, the Board of the Del Norte County Unified School District
23 ("District" or "Board") voted to close the middle school grades (six through eight) of the
24 Margaret Keating Elementary School, in Klamath, California, and to reassign the sixth
25 through eighth grade students to Crescent Elk Middle School in Crescent City, California,
26 beginning September 2005.

1 Eight children of Native American descent, through their parents/legal guardians,
 2 and on behalf of a putative class of Native American children who would attend grades
 3 six through eight at Margaret Keating but for the closure, claim that the decision to close
 4 the middle school grades of Margaret Keating Elementary School and to reassign middle
 5 grade students to Crescent Elk Middle School had a discriminatory impact on Native
 6 Americans, and was racially motivated. Plaintiffs seek a "preliminary and permanent
 7 injunction mandating the defendants to re-open grades six through eight at Margaret
 8 Keating Elementary School, staffed with qualified teachers assigned to teach each grade
 9 the full curricula appropriate to that grade and supporting activities that teach and foster
 10 Native American languages, history and culture, and permit any and all Native American
 11 children living in Klamath and eligible for those grades who wish to do so to attend the
 12 middle school grades at Margaret Keating." Plaintiffs also seek class certification and
 13 attorney's fees pursuant to 42 U.S.C. §1988.

14 Defendants assert that the decision to close the middle school grades of Margaret
 15 Keating Middle School and to reassign those students to Crescent Elk Middle School was
 16 made for legitimate, nondiscriminatory reasons, including cost savings due to a budget
 17 deficit, and to provide students with better educational opportunities.

18 Legal Issues

19 The legal issues are as follows: (1) whether or not the District Board's decision to
 20 close the middle school grades of the Margaret Keating Elementary School and to
 21 reassign these students to Crescent Elk Middle School violated plaintiffs' rights under 42
 22 U.S.C. §1983 (Equal Protection Clause of the Fourteenth Amendment to the
 23 Constitution) and/or Title VI of the Civil Rights Act of 1964; (2) whether or not the
 24 plaintiffs qualify as a certifiable class; (3) whether or not plaintiffs have standing; and (4)
 25 whether or not plaintiffs are entitled to declaratory and/or injunctive relief.

26 Motions

1 Defendants intend to proceed with a motion for summary judgment, following
2 completion of discovery. Plaintiffs intend to file a motion seeking class certification.

3 **Amendment of Pleadings**

4 The claims brought by Ruby Grubbs as guardian *ad litem* on behalf of Cherrisa
5 Parsley and Isaiah Parsley have been dismissed because Ms. Grubbs is no longer the
6 Parsleys' guardian *ad litem*. Plaintiffs are considering seeking approval from the Court
7 to amend the Complaint to add an additional plaintiff.

8 **Evidence Preservation**

9 Plaintiffs believe that most or all of the documents supporting its claims in this
10 case are in the custody of the defendants, but plaintiffs have taken measures to ensure the
11 preservation of what few documents they possess relevant to this action. Defense counsel
12 has informed defendants of the need to preserve all evidence relevant to the issues in this
13 action, and have insured that no such evidence will be destroyed or erased.

14 **Disclosures**

15 The parties have agreed to make initial disclosures pursuant to Rule 26(a)(1)
16 concurrent with the filing of this statement.

17 **Discovery**

18 The parties have conferred and agree to a discovery plan as follows: completion of
19 factual discovery by September 30, 2008; completion of expert discovery by December 1,
20 2008. Plaintiffs anticipate filing a motion for class certification, and defendants a motion
21 for summary judgment, sometime in January 2009.

22 **Class Actions**

23 Plaintiffs contend the proposed class — all Native American children living in Del
24 Norte County who would attend grades six, seven and/or eight at Margaret Keating
25 Elementary School in the 2007-2008 and subsequent academic years but for Defendants'
26 closure of those grades — satisfies all four requirements of Rule 23(a), and is properly

1 maintained as a class action pursuant to Rule 23(b)(2). Defendants dispute this, and will
2 oppose any motion for class certification.

3 **Related Cases**

4 On April 21, 2008, plaintiffs filed in Del Norte County Superior Court the Cal.
5 Gov't Code §11135 cause of action that this Court dismissed. The parties have agreed to
6 stay that action pending resolution of this case.

7 **Relief**

8 Plaintiffs seek a "preliminary and permanent injunction mandating the defendants
9 to re-open grades six through eight at Margaret Keating Elementary School, staffed with
10 qualified teachers assigned to teach each grade the full curricula appropriate to that grade
11 and supporting activities that teach and foster Native American languages, history and
12 culture, and permit any and all Native American children living in Klamath and eligible
13 for those grades who wish to do so to attend the middle school grades at Margaret
14 Keating." Plaintiffs also seek class certification and attorney's fees pursuant to 42 U.S.C.
15 §1988.

16 **Settlement and ADR**

17 Plaintiffs' and defense counsel, and defendant/Superintendent Jan Moorehouse
18 met and conferred in person at the law offices of plaintiffs' counsel regarding possible
19 informal resolution of this matter. Because this case was assigned to the ADR Multi-
20 Option Program, the parties have filed the required Notice of Need for ADR Phone
21 Conference form. The parties conducted an ADR phone conference with the Court's
22 ADR representative prior to the motion to dismiss hearing, and it was agreed to put off
23 further ADR discussions until after the Court's ruling on the motion to dismiss. This
24 follow-up ADR phone conference has been scheduled for June 12, 2008.

25 **Consent to Magistrate Judge for All Purposes**

1 The defendants declined to have a magistrate judge conduct all further
2 proceedings in this matter.

3 **Other References**

4 The parties do not believe this case is suitable for reference to binding arbitration,
5 a special master, or the Judicial Panel on Multidistrict Litigation.

6 **Narrowing of Issues**

7 At this juncture, the parties do not have any proposals for the narrowing of issues,
8 the expediting of the presentation of evidence at trial, or the bifurcation of issues, claims
9 or defenses.

10 **Expedited Schedule**

11 The parties do not believe this is the type of case that can be handled on an
12 expedited basis with streamlined procedures.

13 **Scheduling**

14 The parties have conferred and agree to a factual discovery cut-off date of
15 September 30, 2008 and an expert discovery cut-off date of December 1, 2008. The
16 plaintiffs anticipate filing a motion for class certification, and defendants a motion for
17 summary judgment, sometime in January 2009.

18 **Trial**

19 Plaintiffs expect that this trial, which will take place before a jury, will be
20 approximately four to six weeks in length.

21 **Disclosure of Non-party Interested Entities or Persons**

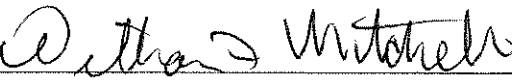
22 The parties have filed the "Certificate of Interested Entities or Persons" as required
23 by Civil Local Rule 3-16, and, other than the named parties, no such interested entities or
24 persons exist.

25 **Other Matters**

1 The parties suggest that a further case management conference be scheduled prior
2 to the agreed-upon factual discovery cut-off date of September 30, 2008.

3
4 DATED: May ~~27~~²⁹ 2008

MITCHELL, BRISSO, DELANEY & VRIEZE

5 By: 
6 Attorneys for Defendants

7
8 DATED: May ~~27~~²⁹, 2008

COVINGTON & BURLING LLP

9 By: 
10 Attorneys for Plaintiffs

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